IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.2293 of 2006

Anand Udyog Pvt.Ltd. Petitioner

Vs.

Automatic Steel Products & anr. Respondents

Mr.C.R.Naidu with Mr.N.P.Dalvi i/b M/s. C.R. Naidu & Co. for petitioner.

Mr.Premlal i/b M/s.Sreeji & Lal for Resp.No.2.

CORAM: B.H.MARLAPALLE,J.

August 01, 2006.

P.C.

. Heard the learned counsel for the petitioner.

Rule. Respondents waive service. By consent Rule is made returnable forthwith.

. The petitioner assails the order dated 22/9/2005 passed by the learned Judge of the Small Causes Court at Mumbai discharging Interim Notice No.539 of 2004. On 25/1/1995 the plaintiff was in the witness box and in his depositions the original agreement dated 15/5/1969 was referred and marked for identification and it was noted that it was not

traceable from the record and, therefore, a xerox copy was produced on record which was marked as X-1 for identification. The same documents came to be sent to the Collector of Bombay for its adjudication under the Stamp Act as per the order dated 28/3/1995 passed in Interim Notice No.1104 of 1995. The trial of the suit was stayed as per the order dated 23/7/1998 and the document was in the meanwhile adjudicated and the plaintiff paid the deficit stamp duty of Rs.16,160/- for which he was issued a stamp receipt No.142 dated 20/8/1999. But the agreement was not returned by the Registration Office and it was subsequently realised that it was lost. The plaintiff, therefore, moved this Interim Notice with a prayer to bring on record a xerox copy of the document marked as X along with the original receipt dated 20/8/1999. He also prayed for marking it as an exhibit. The learned Judge of the trial Court was not in agreement with the plaintiff and he accepted the contentions of the defendants that the said document could not be taken on record and could not be marked as an exhibit. This view taken by the trial Court is palpably erroneous to the extent of refusing to take the documents on record. After having satisfied itself the trial Court ought to have

considered that the document was forwarded for adjudication and it was lost, the plaintiff had paid the requisite stamp fees which was found to be deficit and a receipt to that effect was also issued on 20/8/1999. This receipt was also sought to be placed on record. Whether the document marked as X was the original agreement or not would be a matter of evidence and the plaintiff's contentions would be so tested and, therefore, it could not have been marked as an exhibit straightway but nevertheless the plaintiff must be given an opportunity to prove the said document and it is necessary that the said document is allowed to be proved by evidence so that it is exhibited during the trial of the suit.

. Hence this petition succeeds partly and the impugned order is hereby quashed and set aside. The document marked as Exhibit X-1 (xerox copy) along with the stamp receipt dated 20/8/1999 is hereby allowed to be taken on record in RAE Suit No.565/2079 of 1980 and it is for the plaintiff to prove the said xerox copy being the agreement by leading evidence.

. Rule made absolute accordingly with no order as to costs. Trial of the suit is expedited and it

is directed that the trial be completed as expeditiously as possible and preferably by 31st May 2007. Writ to go forthwith.

(B.H.MARLAPALLE,J.)